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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATE

OCTOBER TERM, 1997

JAMIU A. SAID(Petitioner)

V.

MARVIN T. RUNYON(Respondent)

(Postmaster-General)

Petition for Writs of Certiorari

to the United State Court of Appeals

For the First-Circuit.

PETITION FOR WRIT OF CERTIORARI

JAMIU A. SAID(Petitioner)

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10 RP

QUESTIONS PRESENTED

The Claimant(Petitioner) in this employment discrimination claim received summary judgment against his person under Rule-50(A). The questions presented for review are:

(1) Review of the Judgment of the Appellate Court of the First Circuit(which affirmed the District Court judgment base on Rule-50(a), on the ground that petitioner could not present exhibital evidence of his replacement during the district court trial on 02/24/97.

(11) Whether Petitioner was discriminatorily rejected for promotion and unlawfully discharged of his duties by respondent(USPS) on the day in question becaused of his race (black), National Origin(nigeria) and his religion practice (Islam) in violation of petitioner claims

and charges of his complaint.(see Appendix,,T-1 to T-16. PP.39a. to 54a., at Paragraph--#1 and #20 of the Petitioner formal complaint upon respondent.)

(111) If so as stated under aforementioned (foregoing) question-#(11) What standard should be applied to allowed entitlement on the basis of a **Material Changes in Condition** of the proceeding as a result of the District Court trial on February 24, 1997. In regards to Petitioner sections of claims and charges of his complaint upon respondent.

LIST OF PARTIES

The caption of the case in this proceeding before the United State Court of Appeals for the First Circuit, contains the name of the parties herein:

Mr. Jamiu A. Said (The petitioner), an individual citizen of the United State and the Respondent was an Independent Commercialized excecutive government branch agency(United State Postal Service) headed by Mr. Marvin T. Runyon, Jr.(postmaster-general) in the State of Rhode-Island.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997.

No_____

JAMIU A. SAID(Petitioner)

V.

MARVIN T. RUNYON(Postmaster-general)

(Respondent)

Petition for Writ of Certiorari to the United States Court of Appeals for First-Circuit.

PETITION FOR WRIT OF CERTIORARI

Jamiu A. Said respectfully prays that a writ of certiorari issue to Review the Judgment and Opinion of the United State Court of Appeals for the First Circuit.(affirming the District Court Judgment) enter in this proceeding on October 15, 1997 in order to resolved the

conflicts between the First, Second, Third, Fifth, Eight, Nineth and Eleventh Circuit Court of Appeals and to address the importance issue of the validity of the clauses and sections of law of the petitioner claims and charges upon respondent.

OPINION

The Opinion of the United State District Court of the state of Rhode-Island under civil action #95-619-T which was re-printed in Appendix-A1,A2,A3.PPP. 1a, 2a, 3a. hereto. And the judgment under civil action #97-1405 from the United State Court of Appeals for the First-Circuit re-printed in Appendix-F1-a, F1-b, F2, F3. Pg.8a-1,8a-2,9a,10a. gives rise to the seeking of the petition. The decision of the Administrative Judge Issued on 6/13/94 under case EEOC hearing

Nos.160-94-8173X and 160-94-8174X and Agency #1B-1462-93 was re-printed or reported in Appendix-C. P.5a and the decision of the United State EEOC(office of federal operation) issued under appeal #01944657 and Agency #1B1462-93 on or about 11/7/95 was re-printed on Appendix-D1,D2. PP.6a,7a.

JURISDICTION

The Judgment of the District Court (render pursuant to 28 USC @1331,@1343(a), and 42 USC @2000e-(16), @2000-5(J) was entered on January 10, 1997 and February 24, 1997 (see appendix-A1,A2,A3, and B. PPP.1a,2a,3a and 4a.) all re-printed. This Judgment was saught to be review by Appellate Court of the First Circuit, Pursuant to 28 USC sect.1291 and sect.1292 docket appeal #97-1405(see Appendix-F1-a, F1-b,F2,F3. Pages. 8a-1,8a-2,9a,10a. i.e. appeal court ruling.) The Jurisdiction of

of the Supreme Court to review the Judgment of the Appeal Court case #97-1405 is invoked under 28 USC Sect.1254(1) and Rule-13.1,14.1, and 14.3 of the Supreme Court rules.

STATUTES AND REGULATION

STATUTES: Title 28 USC @1331 Provides: that District court shall have original jurisdiction of all civil action arising under the constitution, laws or treaties of the United State without limit to the amount in controversy. citing: Owen.445 US 622(1980).

Title 28 USC @1343a(1):

Provides recovery of damages for injury to any person or property or bacaused of the deprivation of any rights or priviledge of a citizen of United State by any act done in furtherance of any conspiracy mentioned in section 1985 of Title-42.

Title 28 USC Sect.1343a(2)

Provides to recover damages from any person including respondent(USPS) who fails to prevent or to aid in preventing any wrongs mentioned in Sect.1985 of Title-42 which respondent had knowledge were about to occur and power to prevent.

Title-28 USC Sect.1343a(3)

Provides re-dressing the deprivation under color of any state law, Statute, Ordinancy, Regulation, Custom or Usage of any right priviledge or immunity secure by the constitution of United State or by any act of congress providing Equal rights of citizen or of all person within the Jurisdiction of the United State.

Title 42 USC Sect.1983,Sect.1981.

Later provides relief, Compensatory and Damages for Intentional

employment discrimination.

While Sect.1983: is a civil actions for deprivation of rights, it provides that every person under color of any statute, ordinancy, regulation, cutom or usage of any state or territory subjects or causes to be subjected any citizen of the United State or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secure by the constitution and laws shall be liable to the party injured in an action at law suit in equity or other proper proceeding for redress.

For petitioner to prevail on his claimed for deprivation of Liberty, due process clause and equal protection clause of the Fifth and Fourteen Ammendment., Petitioner has to show that his termination (as occured in this case, Pre-textual Insurbordination being the case, see

Appendix-01,02.PP.29a,30a,.) Foreclosing other employment, alternatively: That Petitioner had property in continued employment.citing BRSC.et.al. V. Roth. 408 US 564(1972). For where Petitioner claimed for damages under or did arise under the constitution or petitioner stated caused of action under the Fifth and Fourteen Ammendment to the constitution as in entitled case. Petitioner is within the meaning of 28 USC @1331(a). Can Petitioner demonstrate an injury consequently upon violation of his constitutional rights. Citing: Biven: 403 US 388(1971).

This court has re-affirmed the notion that any claim arising out of constitution violation calls for interest or damages to be paid by the United State or it's Agency to the agrieved claimant.citing: U.S. V. Louisiana.446 US 253(1980).Smith V. United

State.302 US 329(1973). Davis V. Passman. 442 US 329(1979). Carlson-DFBP.et. al. V. Green. 446 US 14(1980). SALRC V. US 261 US 299(1923). Nixon V. Condom.286 US 286(1932). Lib of Cong. V. Shaw.478 US 310(1986).Johnson V. REA.421 US 987(1975). It was Opined in Douglass V. Brooks. 818 F.2d.513(2nd-Circ.-1977), under 29 CFR @ 1607. EEOC guideline,Court of Appeals held that where plaintiff stated deprivation secured by "Bill of Right", Petitioner has stated claim or caused of action under @1983. The Fifth Ammendment equality and it's due process clause applies to Federal Government or it's Agency(herein Respondent) Ecomprising those clause principle. citing: Mathew V. Decastro.429 US 181(1976).

29 CFR @1607.35 Fed.Reg.12333 August 1st 1970: A guideline on employee selection: Demanded that employer using

test or ranking system have available "data demonstrating that the test or ranking is pre-dictive of or significantly correllated with important elements of work behavior which comprises or are relevant to the job or job for which candidate are being evaluated". Id @ 1607.4(c).

STATEMENT OF THE CASE

Petitioner timely filed of formal complaint(administrative-level) of employment discrimination around May 13, 1993. On or about November 19, 1993 Pursuant to Reg.29 CFR @1614.108 investigation of the complaint was completed. Petitioner request for hearing on the case around December 16, 1993. EEOC of the Agency administartive Judge schedule hearing of the case on or about April 6, 1994 under USPS #1b146293. On May 13, 1994 under EEOC hearing #160-94-8173X and 160-94-8174X.

Agency case #1b1462-93, Agency(USPS) request for postponement of the hearing and that no date be set for hearing as the Agency is in the process of offering Petitioner "Full-Relief" see Appendix-G1,G2. Pages-11a,12a.. On May 3, 1994 Agency moves for finding of fact and conclusion of law without a hearing nor discovery pursuant to 29 CFR 1614.109(e)(1).

On June 13, 1994 administrative judge Mr. Kenneth W. Chu. issued his finding and conclusion without a hearing nor discovery pursuant to 29 CFR Sect. 1614.see Appendix-C.P.5a.(reprinted).Petitioner appeal the administrative EEOC decision. by July 7, 1994 Petitioner counsel moves to vacate/appeal the administrative Judge decision render on the entitled case without a hearing and to conduct a meaningful discovery which petitioner has not done. The Appeal and the request for

discovery by petitioner counsel was declined by administrative Judge and the Agency, thus on July 18, 1994 Notice of Appeal was filed by petitioner counsel to the office of fed. operation at Wash.DC. which was received by that office on or about August 19, 1994. Appellant brief of the appeal was sent to same office on September 26, 1994. The Federal Office Issued its decision on November 7, 1995 under appeal #01944657 and Agency #1b1462-93 allowing Appellant(petitioner) to proceed on civil action to the United State District Court, Rhode-Island district upon receipt of the commision decision(see Appendix-D1,D2. PP.6a,7a.) by the Petitioner.

On November 29, 1995 Petitioner filed his initial formal complaint(reproduce in Appendix-T1 to T16. Pages.39a to 54a.) in the United State Rhode-Island

District Court with a docket #95-619-T. On 11/29/95 District court summon(es) issued, case to district court Judge Mr. Ernest C. Torres and assigned to Magistrate Judge Timothy M. Boudewyn. On same date Plaintiff(herein Petitioner) motion the court for appointment of a counsel or an attorney. On 12/1/95 District Court Judge Mr. Ernest C. Torres Issued an order denying Petitioner motion (dated 11/29/95) requesting for appointment of a counsel. On 12/12/95, Petitioner filed his financial affidavit(to justify being unable to afford nor retained an attorney) Entry date by the court on 1/29/96. On 1/26/96 Court received return of service (of the complaint) excecuted to respondent on 1/18/96, answer to the complaint from respondent due on 2/7/96. Respondent answ-wered to the complaint on 3/19/96.(Entry date by the court 3/20/96.)

On 3/18/96 ORDER to show cause: Hearing set for 10.00am of 4/3/96-to show cause why this case should not be dismissed for lack of prosecution.(signed by Magistrate Judge Timothy M. Boudewyn) On 3/25/96 "Notice and Order" for pre-trial conference to be held before Magistrate Judge T. Boudewyn at 10.00am of 4/3/96 and both party to submit their proposed discovery plan by 4/1/96.(Signed by Magistrate Judge Timothy M. Boudewyn) On 4/3/96 "Pre-trial" conference was held by both party before Magistrate Judge T. Boudewyn, On this date both party filed the proposed discovery plan(Plaintiff and the Defendant) On this same day/date **A SCHEDULLING-ORDER**(FRCP-Rule-16.Pre-trial) jury case setting Discovery cut off date as August 5, 1996. and Pre-trial memorandum filling cut-off date as 30-days after the discovery closure date(i.e.September

5th, 1996).(Signed by Magistrate Judge Timothy Boudewyn.) On 4/12/96, Petitioner motion the court for "Discovery" which was granted by the court on 4/29/96. Most of the discovery request was objected by the respondent. Henceforth on 7/9/96 Plaintiff (herein Petitioner) motion the court to **COMPEL** for meaningful discovery, and secondly motion for court appointed Attorney(second-time) to represent his interest in the entitled case while Plaintiff(petitioner) paid for the cost of retaining the Attorney.

On 7/24/96 Petitioner Compel Discovery request was granted by **Court-Order** (objection time expired). On July 25,1996 Magistrate Judge Robert Lovegreen vacated the 7/24/96 court order granting Petitioner motion to compel discovery disclosure based on 7/25/96 respondent motion to vacate the compel court order without

first serving objection to such compel motion. Furthermore the same petitioner compel discovery request dated 7/9/96 and a court order dated 7/24/96 granting the compel request was refered to Magistrate Judge T. Boudewyn who on 7/29/96(as done by Judge Magistrate Robert Lovegreen) denied the 7/24/96 Court Order granting petitioner compel disclosure request. (meanwhile schedulling order issued on the case is running out of date/time) Denying or Vacating such compel court order for "discovery" for no reason or on technicality as court has previously noted that it was Innapropriate nor Recognized in a Statutory Scheme in which **LAYMAN** as Petitioner-none assisted by trained Lawyer innitiated the process as in entitled case Petitioner was Immune by law from such Denization of his timely compel discovery disclosure request.citing:404 US 526(1972)

On 7/30/96, District court Judge Mr.Ernest Torres DENIED the petitioner motion dated 7/9/96, requesting for court appointment attorney (2nd-request).

On 8/2/96(before closure date of 8/5/96) Petitioner motion the court for another compel discovery disclosure(2nd-time). On 8/5/96(closure date) Respondent motion the court for Summary Judgment without first serving objection to 7/9/96 nor 8/2/96 petitioner compel discovery request nor responding to such request. On 8/7/96 respondent finally objected to court order of 7/24/96, granting petitioner compel discovery request(objection out of time limitation)

On 8/27/96 Petitioner objected to respondent summary judgment motion while on 8/30/96, respondent summary judgment motion was refered to District Court Judge

Mr. Torres. On 9/6/96 an order was granted to petitioner 8/2/96 compel disclosure request(2nd-compel request) by magistrate Judge T. Boudewyn. 4-days later on 9/10/96 District Court Judge Mr. E. Torres refered respondent motion for summary judgment to Magistrate Judge T. Boudewyn for recomendation pursuant to 28 USC sect.636(b)1(b). The recomendation was reprinted in Appendix-P1,P2.PP.31a,32a. Pursuant to FRCP 72b Petitioner filed his new evidence and objection against the recomendation.

On 1/10/97 an order was issued by the court(see Appendix-A1,A2,A3) granting respondent Summary Judgment in Part and Rejected in part, thus the case was placed on 2/24/97 trial calender after which the Judgment was enter in favor of the respondent.(see Appendix-B,P.4a) On 3/23/97 Petitioner appeal the judgment to the Court of appeal for the first circuit

under docket #97-1405. On 10/15/97 Order of the District Court based upon Rule-50a was affirmed by the United State Court of Appeal to the First Circuit (see F1a,F1b,& F2,F3. pages.8a1,8a2,9a,10a.(reprinted)

REASON FOR GRANTING THE WRIT

(A) FIRST CIRCUITS COURT OPINION(by affirming district court judgment) CONFLICTS WITH RULING BY THE SECOND, THIRD, FIFTH, EIGHT, NINETH, ELEVENTH. AND PRIOR FIRST CIRCUIT RULING.

REGARDING:

(1) The Standard to apply in granting Summary Judgment while Discovery request were outstanding. The District Court Magistrate Judge makes a recomendation dated October 18, 1996 (Appendix-P1, P2, pp.31a,32a.) The decision of the District court judge(in Appendix-A1,A2,A3.PPP.1a,2a & 3a.) was based on the Magistrate Judge recomendation, which was done while

Petitioner "compel discovery" was still pending(see Appendix-Q1,Q2,Q3.PPP.33a,34a, 35a., dated 10/10/96 received by petitioner on 10/23/96).See: Same V. Cable. 732 F. 2d.49(3rd-Circ.-1984).It was opined in this Court that it was an Error to grant Summary Judgment while timely pertinent discovery request were still outstanding. Also citing: Shering Corp.712 F.2d.4.(2nd-Circ.-1983), Garrett. 818 F. 2d. 1515(9th-Circuit-1987).

2(a) This Rule-50(a) upon which the Judgment was based becaused petitioner has no exhibital evidence of his replacement in the records nor not being able to present such at the trial, when such exhibit was given or submitted to the court.(see Appendix-M1,M2.PP.24a,25a.) and again none of the respondent management was present in the court to identified those exhibital evidence which was admissible under Rule-

803(6)(8)citing:Prattco Inc.607 F.2d. 1153 (1979).,thus petitioner could not present the evidence of his replacement while at the same time under oath petitioner testify on the stand as to his replacement employee(see Appendix-I-1,I-2,I-3,I-4.Pgs. 15a,16a,17a,17a-1,) This Judgment under Rule-50(a) was in Contrast to the foregoing appendix as well as Appendix-M1,M2. PP.24a,25a.(an existence of Job opening)

(b) Rule-50(a): Stated that whether the evidence present sufficient disagreement to required submission to a jury or whether it is one sided that one party must prevail as a matter of law.citing: Nat.Bank of Ar. V. City Service.391 US 253 (1967). In referenced to Appendix-I-1,I-2, I-3 & I-4.Pg.15a.16a.17a.17a-1. & Appendix M1,M2. PP.24a.25a. there are sufficient disagrement as to the replacement.

(c) Rule-50(a) Applied to granting of

of summary Judgment **ONLY** if all records and motion of the opposing party was **considered** by the court or the trial Judge, by seeing Appendix-M1,M2,I1. PPP.24a.25a.& 15a. It was not so in the entitled case. see Walter V. NARS.et.al. 473 US 305(1985) The First Court of Appeal may not affirmed the District court Judgment that was based on Rule-50(a) nor direct a verdict under the rule if reasonable minds could differ as to the imports of the evidence of the Appendix-I-1,I-2,I-3,I-4. Pgs.15a.16a.17a. 17a-1..Appendix-L1,L2. PP.23a-1,23a-2. and Appendix-M1,M2. PP.24a,25a. citing: Brady V. Southern R. Co. 320 US 476(1943)

(d) For the reason stated in the foregoing:2a,2b,2c.i.e. District court and the trial judge not considering all of the Petitioner exhibit nor his trial testimony that he was replace and for the Appellate Court to affirmed such Judgment raised

Rule-52(a): That stated that it's standard is met when on the entired evidence the court is left with definite and firm conviction that mistake has been commited see U.S. V. United Gypsum Co.333 US 364(1948) thus such judgment based on Rule-50(a) upon the character and factors of the proceeding was **NULLIFY** by Rule-52(a).

(3) Escaped of an Axe The Appeal Court ruling was in confliction with prior circuit court opinion that petitioner can escaped an axe of district court summary judgment(i.e.nullification or Voided of the summary judgment) if the records later comprise adequate direct or circumstantial evidence of respondent discriminatory intent as in (Appendix-I-1,I-2,I-3,I-4.J1, J2.,L1,L2.,N1,N2,N3,N4.,K1,K2,K3,K4.,H1,H2 & E1,E2.) citing: Mack. 871 F.2d.179(First Circ.-1989).,Miguel V. B. Meyers.95 F.3d. 86.(1st.Circ.-1996).

(4) To USC 42 Sect.2000(h) of Title-VII Respondent failed and refused to adhere to this rule as applied to petitioner is an intent to discriminate for the following reason:(a)In Appendix-L1,L2. Petitioner as **Satisfactory employee** (b)In Appendix-K1, K2,K3,K4 and Appendix-N1,N2,N3,N4 showing petitioner as the most senior employee during the time.see.Pullman V. Swint.456 US 273(1982).

(5) To Discriminative Motive or Intentional Discrimination : Those none Petitinoner Protected group employee in Appendix-J1,J2.(similarly situated) on the day in question left their shift earlier than 7.35am(early than petitioner) in Comparable to petitioner were never discipline nor discharged but treated favourably by being promoted to transitional employee and later becoming career appointment (full-time) employee of

of the respondent as in Appendix-K1,K2,K3, K4. & Appendix-N1,N2,N3,N4. signify discriminative motive of respondent.citing:Lib. V. Chescheir. 713 F.2d.1142(5th-Circ.1983)

(6) To Burden of Persuassion:

Petitioner met this burden by showing that respondent non-discriminatory proffered reason for his adverse decision(as Stated in the Respondent Summary Judgment Motion, see Appendix-S1,S2. PP.38a-1,38a-2.) of (a) Poor Attendance (b) Only one available promotional position to Petitioner tour-1 shift.(c) General subjective criteria evaluation. Those reason(a.b.c.) does not and are Unworthy of Credency rather a pretext, by Falsifying those reason see Appendix-H1,H2. showing Petitioner Attendance was proper(good) (b) see Appendix-N1,N2,N3,N4. testifying that Eleven (11) Transitional Promotional Position was filled to Tour-1 (petitioner shift). The following circuit

Courts declared that upon such"Falsification"of the respondent proffered reason commands Judgment for petitioner and that respondent was liable.citing:Williams.964 F.2d.723(8th-Circ-1992),Wang.694 F.2d.1148 (9th-Circ.-1981),Robert.835 F.2d.796(11th-Circ.-1988).

The Third proffered reason of General Subjective Criteria needs no longer to be address as this issued already being decided in the following Circuit Court as Discriminative Criteria based on those impermisible factors as race. e.t.c. citing: Antonio-II.827 F. 2d. 445(9th-Circ.1987), Jareurequi.552 F. 2d. 1128(9th-Circ.1988), Carlsbad.58 F.3d. 439 (9th-Circ.1995),Fadhl.741 F.2d. 1163 (9th-Circ.1984),Lynn. 656 F.2d 1345 (9th-Circ.) Stallworth. 777 F. 2d.1431(11th-Circ.1985) Bluebell.737 F.2d.1007(11th-Cir.1984),Hill V. S.Coastline.885 F.2d.804(11th-Cir.1989)

(7) Establishment of Prima Facia Case of disciminatorily discarged and none selection for promotion:in the following Appendix-R1,R2,R3.,L1,L2.,I-1,I-2,I-3,I-4. & 01,02. and Appendix-E-1, & E-2.

(8) As to no Substantial reason to question district court summary judgment per First circuit court of Appeal:Seeing Appendix-M1,M2 shows that Petitioner full exhibital evidence was not considered nor seeing by the trial Judge when such exhibital evidence was submitted to the court. Appendix-I-1. is of the replacement individual while Appendix-I-2,I-3,I-4. are trial court transcript where petitioner on the stand testify as to his replacement employee, raised a vital substantial facts to question the district court summary judgment. In contrast quoting Hon. Chief Justice Rehnquist as opined for the court decision of NY.-Times V. Sullivan. 447 US

242(1986) mentioned of no substantial reason, but rather a mere pre-ponderance of the exhibit.

(B) THE VALIDITY OF THE SECTIONS BY WHICH PETITIONER CLAIMS AGAINST THE RESPONDENT IS AN IMPORTANT THRESHOLD ISSUE

As a threshold inquiring into the application upon which petitioner claim arises, is an issue of importance to the proper application of the section of the Act and to the principles of "Res-Judication and Finality".Independent of the Conflict in the Circuits, Court may grant Certiorari. In this case becaused of the Importance of the issue of Validity of the Regulation upon administration of the Sections and the Acts. see: Re-Negotiation Bd. V. Bannercraft Co.415 US 1,11.94 S ct. 1028.39.L.ed.2d.123(1974). Certiorari was also granted in Johnson V. R.E.A. 421 US 987(1975) to considered the Important of

Federal or Constitutional Law presented in the case as comparable to the entitled case.Further question presented is whether under Rule-50(a) by which the Judgment came to pass is proper?. As a matter of "**Fairness**",Petitioner is entitled to full evidentiary presentation before a Final decision can be reached see.Appendix-M1,M2 The First Circuit Court addressed the issued of the entitled case in an"Inconclusive Posture" by affirming district court decission based on Rule-50(a) thus the Circuit Court opinion has no binding effect and Appeal Court automatically given the upper court(Supreme-Court) the power of Review.citing: Walter V. NARS.et. al. 473 US 305 (1985)-It is the Claused of **Discretion-Standard**,becaused the records developed in the district court by the respondent(see Appendix-P1,P2.,Q1,Q2,Q3.,& I-1,I-2,I-3,I-4., M1,M2.) to Justify Rule-

50(a) was not one way records for direct verdicts and is simply Insufficient to allowed a final decision on merit in the First-circuit court, as a matter of "Fairness" petitioner is entitled to full evidentiary presentation before a final decision can be reached.. see. 475 US 305. (1985).

Secondly becaused Petitioner have not "Acquiesed" in this case that @717 exclusive or pre-empt of his claimes required the issued in the entitled case to be passed on to the court (Supreme-Court) whom the Appellate Court of the First Cir. relied on for the @717 Interpretation as proper.see:Perez V.FBI.71 3d.513(5th-Circ. 1995)..Thirdly Certiorari may be granted for where creation for the award of damages may be necessary as a result of the bases of the claim.see:28 USC @1331(a)

Lastly a decision cannot squarely be

against Constitutionality of a Statute as in entitled case, if the Constitutionality question is still open, Unfinished or Inconclusive.citing:Cohen V. B.Ind. Loan.337 US 546.. Accordingly, Certiorari also is appropriate in order to protect the "Principles of Finality" adopted by the Congress.

CONCLUSION

For the Foregoing reason the Petition for Writ of Certiorari should be granted.

Respectfully Submitted.

Jamiu A. Said(Petitioner)
P.O. BOX 3229,Providnece
Rhode-Island. 02909
(401)351-0046.

A-P-P-E-N-D-I-C-E-S.

APPENDIX-A1.

UNITED STATE DISTRICT COURT

DISTRICT OF RHODE-ISLAND

JAMIU A. SAID

V.

MARVIN T. RUNYON,JR.

ORDER

The recomendation of the Magistrate Judge Boudewyns dated October 18, 1996 that defendant's motion for summary Judgment be granted is Accepted in part and rejected in part.

The motion for summary Judgment is granted with respect to: (1) The Claim asserted under the Fifth and Fourteen Ammendment and the Rhode-Island Equal Right Act"Those claims are pre-empted by sect.717 Ttitle-VII 42 USC Sect.2000e-16(a).Brown V. G.S.A 425 US 820,835,96 S.ct.1961(1976).Sect.717 creates a comprehensive administrative and judicial scheme for redressing claims of

APPENDIX-A2

discrimination in federal employment and provides the exclusive remedy for such claims of discrimination):Degrace V. Rumsfeldt.614 F.2d.796,808(1st-Circ.1980)

(2) That portion of Title-VII claim that alleges discriminatory failure to promote. The Uncontroverted facts established that the defendant had a legitimate non-discriminatory reason for not promoting the plaintiff(i.e. That the plaintiff did not meet the objective criteria established for promotion).

(3) The claim for punitive damages and Attorney's fee. The civil Right Act of 1991 does not permit recovery of punitive damage in Title-VII cases against a government agency, or politically sub-division.42 USC sect.1981a(b)(1).Fee Shifting statutes do not permit pro-se litigant to recover attorneys's fee.Kay V.

APPENDIX-A3

Ehrler..499 US 432. 111 s ct.1435, 1436-37 (1991).The defendant motion for summary judgment with respect to the discriminatory firing claim under Title-VII is denied on the ground that parties have submitted conflicting affidavits that create a genuine issue of material facts as to whether the plaintiff(i.e. leaving before the end of his shift despite having been instructed not to) was a Pre-Text for discrimination. The case shall be place on February trial calender.

By Order.

Enter: /S/Jim Webb

/S/Ernest C. Torres. Jim Webb

Ernest C. Torres. Deputy Clerk

United State District

Judge.

Dated January 10th, 1997.

APPENDIX-B

UNITED STATE DISTRICT COURT

FOR THE DISTRICT OF RHODE-ISLAND

JAMIU A. SAID(Plaintiff)

VS.

MARVIN RUNYON,.(Postmaster)

(Defendant)

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered in favour of the defendant. Marvin T. Runyon. Post-master, upon the granting of defendant's motion for judgment as a matter of law by United State District Judge.Ernest C. Torres.

/S/Maria I Branco

Maria I Branco

Deputy Clerk

Date: February 24, 1997.

APPENDIX-C-1

UNITED STATE OF AMERICA

EEOC, NEW-YORK DISTRICT OFFICE

#2 WORLD TRADE CENTER, 18TH FLOOR

NEW-YORK, 10048-1102.

JAMIU A. SAID(Complainant)

V.

MARVIN T. RUNYON(Defendant)

Postmaster-general(USPS)

EEOC Hearing no.160-94-8173X & 160-94-8174

Agency File No.1B-1463-93

Before:

Kenneth W. Chu

Aministrative Judge.

FINDING AND CONCLUSION WITHOUT A HEARING AND DISCOVERY PURSUANT TO 29 CFR SECT.1614.109

I Find that the complainant has failed to established a Prima Facie Case of discrimination against the Defendant

/S/Kenneth W. Chu

APPENDIX-C2

Kenneth W. Chu

Administrative Judge

Dated: June 13th, 1994.

APPENDIX-D1

UNITED STATE EEOC OFFICE FEDERAL OPERATION. P.O.BOX 20036 WASH.DC 20036.

JAMIU A. SAID(Appellant)

V. Appel-#-01944657

MARVIN T. RUNYON Agency #1B1462-93

Postmaster-general(USPS)

N.E./New-York Metro Area.Agency.

CONCLUSION/OPINION

For the reason stated and based on the evidence presented. It is the decision of this commission to affirm the fad finding no discrimination base on race, religion, and national origin.respecting appellant termination and his non selection for promotion.

For the Commission

/S/Ronnie Blumenthal

Ronnie Blumenthal

Dated.Nov.7th,1995. Director Office of Federal Operation.

APPENDIX-D2

RIGHT TO FILE A CIVIL ACTION(SO93)

IT is the position of the commission that you have the right to file civil action within 90-calender days from the date you received this decision. You should be aware, however, that courts in some Jurisdiction have interpreted a civil right act of 1991 in some manner suggesting that a civil action must filed within 30-calender days from the date that you received this decision.

APPENDIX-E-1

UNITED STATE DISTRICT COURT

DISTRICT OF RHODE-ISLAND

Jamiu A. Said(Plaintiff)

V.

Marvin T. Runyon(Defendant)

Declaration of Edward T. Krzyzek

I Edward T. Krzyek, pursuant to the Provision of 28 USC Sect.1746 declared under penalty of perjury as follows:

(1) That I am employed by the United State Postal Service as Manager Distribution Operation, in the providence Plant ("The Plant") My office is located at 24 Corliss Street, Providence RI..at Line-#5

Declared that to be eligible to become Transitional Employee a casual employee **"MUST"** have worked at "least" 89-days (USPS-Policy). Jamiu A. Said began his employment with postal service on December 1st. 1992. Therefore he was eligible for

APPENDIX-E-2

promotion to Transitional Employee on those occassions: March 12, March 31 and April 7th, 1993.

I hereby declared that the fore-going as true and correct to the best of my knowledge, information and belief.

/S/Edward T. Krzyek

Edward T. Krzyek

Mgr. Distr.Oper.Providence Unit

Dated: August 5th, 1996.

APPENDIX-F1a

UNITED STATE COURT OF APPEALS

FOR THE FIRST CIRCUIT

No.97-1405 _____

JAMIU A. Said(Plaintiff,Appellant)

V.

MARVIN T. RUNYON(Defendant,Appellee)

_____

JUDGMENT

Entered:October 15, 1997.

This caused came on to be submitted on the brief and original records on appeal from the United States District court for the District of Rhode-Island. Upon consideration whereof, it is now here ordered, adjudge and decree as follows: **The Judgment of the district court is affirmed. see 1st Cir.Loc.R.27.1.**

By the Court:

/S/Phoebe D.Morse(Clerk)

APPENDIX-F1b

Phoebe D. Morse

By/S/Janice M. Oneil

Chief Deputy Clerk

(cc:Messers.Said,Digiola & Ms.Crawford)

APPENDIX-F2a

[not for publication]

UNITED STATE COURT OF APPEALS

FOR THE FIRST CIRCUIT

No.97-1405

JAMIU A. SAID(Plaintiff,Appellant)

V.

MARVIN T. RUNYON(Defendant,Appellee)

POSTMASTER GENERAL OF THE UNITED STATE.

APPEAL FROM THE UNITED STATE DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

[Hon.Ernest C. Torres, U.S.District Judge]

Before

Selya, Boudin and Stahl.

Circuit Judges

Jamiu A. Said on brief Pro-se

APPENDIX-F2-B

Sheldon Whitehouse.U. S. Attorney.,
Anthony C. Digiola. Asst. U. S. Attorney
and Anna V. Crawford.Special Asst. U. S.
Attorney, on the brief for appellee.

October 15, 1997

APPENDIX-F-3

Per Curiam. In this employment discrimination case, reviewing de novo the Rule-50(a) dismissal of appellant's discriminatory discharged claim, in light of the briefs, the transcript and the records, we find that there is no substantial reason to question the Judgment, and it is affirmed. see loc.R. 27.1.

APPENDIX-G1

U. S. EEOC.New-York District Office

7th World Trade Center,18th-Fl.NY.10048

May 17th, 1994

Jamie A. Said
79 Marshall St.
Providence, RI

Robert O Tiernan Esq.
Attorney at law
170 Westminster St.
suit 700, Providence
RI 02903

Nancy Wellman
USPS Labor
Relations Office
24 Corliss St.
Prov. RI 02904

Re: Employment Discrimination Complaint of Jamie A.Said.EEOC Hearing Nos.160-94-8173X and 160-94-8174X. Agency File 1-B-1462-93. The parties are herein informed that EEOC hearing on the aboved referenced complaint has been adjorned until further notice pending availability of Edward T. Kryzyek as witness.

APPENDIX-G2

Further, a hearing will be held in abeyance pending review of the Agency's motion to offer Complainant "Full Relief"

Sincerely,

/S/Kenneth W. Chu

Kenneth W. Chu

Chief Adminstrative Judge.

APPENDIX-H-1

UNITED STATE POSTAL SERVICES

Mineapolis Postal Data Center

Clock Rings and Hourly History.

Finance-#43-7141

Employee: Jamiu A. Said

Employer Fed. Id.#41-0760000

Employer State Id.#RI410760000

Re: Appellant Appendix-#9,P.105 & P.271 to Page-273.

Week/ending-8/93---41.5hrs per week(Last-week of the petitioner with respondent)

Week/ending-7/93-----43.83hrs per week.

Week/ending-7/93-----42.71hrs per week.

Week/ending-6/93-----41.97hrs per week.

Week ending-6/93-----44.43hrs per week.

Week ending-5/93-----42.03hrs per week.

e.t.c,. Per Respondent

Time Log/Clock and Employee record-OMB-#1545-0008.& PS-Form-50.

APPENDIX-H2-A

UNITED STATE DISTRICT COURT

District of Rhode-Island

Jamie A. Said(Plaintiff)

V.

Marvin T. Runyon.Jr.(Defendant)

Postmaster General of the(USPS)

REF: DEFENDANT REPLY TO PLAINTIFF OBJECTION AND REQUEST FOR REVIEW OF THE MAGISTRATE RECOMENDATION ON DEFENDANT MOTION FOR SUMMARY JUDGMENT:

Defendant reply dated 11/20/96 2nd-Paragraph of page-4 into first 3-lines of page-5, stated as follows, quote: Finally with respect to the Plaintiff attachment Exhibit # J-50-A to J-50-D, these are copies of plaintiff pay stub are not "attendance records" as plaintiff claims at page-#8 and #13 of his objection in any event **Plaintiff General Attendance Records is not disputed in this case.**

APPENDIX-H2-B

Dated Windsor Ct:

November 20, 1996.

Sheldon Whitehouse.

U.S. Attorney Distr. RI.

/S/Anna V. Crawford.

Anna V. Crawford.

Special Asst. U.S. Attorney

USPS Law Dept.#6 Griffin Rd

N. Winsor, Ct. 06006-0170.

APPENDIX-I-1

UNITED STATE POSTAL SERVICE

Personel Action Notification

Extract: Form(PS-Form-50 & 2591) and clock ring Authorization and Adjustment Finance- #43-7141 .**(Replacement-Employee)**

Employee Name: District Court Exhibit-J-40 Appellant Appendix-#9.. PP. 224,225.

Employee #:038-44-0467

Hiring Date: April 15th, 1993 (enter duty)

Duty Station: #43-7141. Providence. Proc. Distr. Center.(Main Unit).

Shift Hours: Tour-1(3rd-shift) 12am-6am.

Position: Mail Processor

Processed Date: April 14th, 1993.

Place of Birth: Providence, Rhode-Island.

Per Authorization.

J. Buford White.

Mgr. NE. Area Proc.& Dist.

APPENDIX-I-2

IN THE UNITED STATE DISTRICT COURT FOR THE DISTRICT OF RHODE-ISLAND

JAMIU SAID(Plaintiff)

VS. CA-#95-619-T

MARVIN RUNYON(Defendant) (2/24/97)

PROVIDENCE, RI.

HEARD BEFORE THE HONORABLE ERNEST C.TORRES DISTRICT JUDGE.

A-P-P-E-A-R-A-N-C-E.

For the Plaintiff: Jamiu Said. Pro-se.

For the Defendant: Anna V Crawford Esq.and Anthony C. Digiola Esq.

addressing:

The Court: Now, Mr. Said I will give you another opportunity if you want to get back on the stand, you are still under oath.

Ask yourself the question and give yourself an answer. Ask the question and then answer

APPENDIX-I-3

the question.

Mr. Said: Okay.

The question, now is whether I was told by SDO(Supervisor) to stay on my job until 7.40am on April 12, 1993.

Answer: The answer is NO, I was never told by any SDO or supervisor to stay over from 7.30am until 7.40am.

Mr. Said: The question is after I was fired or after I was terminated, whether defendant replace me with somebody else.

Mr. Said: The answer is YES.

Miss. Crawford: Objection.

The Court: Obviously the question has been answered.

Mr. Said: Whether I was replaced by somebody else of the same group or

APPENDIX-I-4

same race.

Mr. Said: The answer is NO, I was replaced with somebody out of my race after I was terminated.

The Court: All Right is that it ?

Mr. Said: That's it.

Extracts from the court trial transcript line-#4-6 & 8.,Line-#11-20 of page-48 and Line-#5-18 of page-49.

/S/Judith L. Montie.

Judith L. Montie.

Court Reporter

215 Fed.Bldg.Prov. RI 02903.

APPENDIX-J1

UNITED STATE POSTAL SERVICE

MINEAPOLIS POSTAL DATA CENTER

Employer Fed.#41-0760000.

State ID #RI-410760000

Day in Question: April 12th, 1993.

Employee: #037-40-2154, D.Court Exh.J-36a,
Appellant Appendix-#9,Page-152.
ended shift(work) at 6.30am

Employee: #039-50-4805,D.Court Exh.J-44a,
Appellant-Appendix-#9,Page-243.
Ended Shift(work) at 5.08am.

Employee: #428-21-7983,D.Court Exh.J-30a,
Appellant Appendix-#9,Page-160.
Ended Shift(work) at 5.43am.

Employee: #037-50-7401,D.Court Exh.J-43,
Appellant Appendix-#9,Page-239
Ended Shift(work) at 5.11am.

Employee: 039-50-4551 D.Court Exh.J-45a,
Appellant Appendix-#9,Page-248
Ended shift(work) at 5.33am.

APPENDIX-J2

Employee: #037-40-5594, D.Court Exh.J-29A,
Appellant Appendix-#9,Page-152.
Ended Shift(work) at 5.01am.

Employee: #039-44-4640,D. Court Exh.J-48A.
Appellant Appendix-#9,Page-259.
Ended Shift(work) at 5.02am.

Employee: #035-50-5193, D. Court Exh.J-49.
Appellant Appendix-#9, Page-259,
Ended Shift(work) at 5.30am.

Per Respondent
Time Log/Clock ring, Form-PS-2591
PS-Form-50 and Employee records
OMB-#1545-0008.

APPENDIX-K1

UNITED STATE POSTAL SERVICE

Personel Action Notification

Extract: From(PS-Form-50 & 2591) and Clock rings authorization and adjustment records Finance-#43-7141.Providence,Proc/Dist.Ctr. (Main-Unit).

The Following employee of the respondent were not of, nor do they belongs to kind of Petitioner protected group.

Employee: #033-60-2678. D. Court Exh.J-26, Appellant Appendix-9,Page-143.
Hiring Date: 12/9/92.
Position: as Transit.employee.
Terminated: 1/6/93.
Less or not qualify for Transitional employee position.

Employee: #232-78-7761. D. Court Exh.J-28A Appellant Appendix-9, Page-148.
Hiring Date: 12/18/92.
Promotion Date: 4/7/93(as TE)

APPENDIX-K2

Employee: #037-50-9025. D.Court Exh.J-31A, 31C, 31E, Appellant Appendix-9, Page-167, 169, 171.

Hiring Date: 1/11/93.

Promotion Date: 3/12/93. (as TE) Less 89-days on the job requre-ment. Career Appointment:6/25/94

Employee: #039-54-8812. D.Court Exh.J-32A, 32C, 32D, Appellant .Appendix-9, PPP.175,177,178.

Hiring Date: 12/1/92

Promotion Date: 3/12/93. (as TE) Less 89-days on the job required

Employee: #037-54-6193. D.Court Exh.J-33C, 33A, 33D. Appellant Appendix-9, Page-181,183,184.

Hiring Date: 1/11/93

Promotion Date: 3/12/93. Less 89 days on the job requrement.

Employee: #037-40-7935. D.Court Exh.J-34A,

APPENDIX-K3

34B,34C,34E,34F.App.Appendix-9,Page-187, 188,190,192,193.

Hiring Date: 3/23/93.

Promotion Date: 4/7/93.(as TE),15-days on the job, less 89-days requirement before promotion.

Career Appointment: 6/25/94. becoming full time employee of the respondent.

Employe:#036-34-6183. D. Court Exh.J-38A, 38B. Appel.Appendix-9,P.213-214.

Hiring Date: 4/4/93.(as TE)

Promotion Date: 4/4/93.(as TE)

Employee:#035-52-8155. D.Court Exh.J-39A, 39C. Appel.Appendix-9.PP.217,219.

Hiring Date: 1/11/93

Promotion Date: 2/5/93..52-days on the job before promotion.

Employee:#038-34-9594. D.Court Exh.J-42B, 42E,42D.Appel.Appendix-9,Pages-235,237,238

Hiring Date: 12/14/92.

APPENDIX-K4

Promotion Date: 3/31/94.(to-TE)

Career Appointment: 5/14/94. thus becoming full time employee of the respondent.

Employee #038-46-3724.D. Court Exh J-46A, 46B,46C,.Appel.Appendix-9,PPP.251,252,253.

Hiring Date: 12/14/92.(as T.E.)

Career Appointment: 4/30/94.(Full-Time)

Employee: #037-50-9767.D.Court Exh.J-47 Appel.Appendix-9P.258.

Hiring Date: 4/5/93(as T.E.).

Employee:#039-42-4182.D.Court Exh.J-48A, 48C,48D,48E. Appel.Appendix-9,Pages-259, 262,263. Hiring Date: 12/8/92(as TE)

Career Appointment: 10/15/94.(Full-Time)

Per Authorization

J. Buford White

Mgr.NE.Area Proc.& Distr.

Per Authorization

Nancy George

Vice Pre.Area.Oper.NE Area.

APPENDIX-L1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE-ISLAND

JAMIU SAID(Plaintiff)

VS. C.A.-#95-619T

MARVIN RUNYON(defendant)

Monday, Feb.24,1997.

PROVIDENCE, RI.

HEARD BEFORE THE HONORABLE ERNEST C.TORRES

DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E

For the plaintiff: Jamiu Said.Pro-se

For the Defendant: Anna V. Crawford,Esq.

and Anthony C. Digiola.

Appel.Appendix-#9,Pages-358,Line-17 to 21

Addressing

The Court: That up to the time Plaintiff was terminated, is petitioner (Plaintiff) was Satisfactory or is there any dispute as to plaintiff(Petitioner) Perfor-

APPENDIX-L2

mance.?

Miss Crawford: Responding to the trial-Judge based on her Knowledge of the records,Counsel replied the court that the Plaintiff Performance was generally"**SATISFACTORY**".

Per Court Reporter

/S/Judith L. Montie

Judith L. Montie

215 Fed. Bldg. Prov. RI 02903.

APPENDIX-M1

IN THE UNITED STATE DISTRICT COURT

FOR THE DISTRICT OF RHODE-ISLAND

JAMIU SAID(Plaintiff)

VS.

MARVIN RUNYON(Defendant)

CA-#95-619-T

MONDAY FEB.24TH,1997

PROVIDENCE, RI.

HEARD BEFORE THE HONORABLE ERNEST C.TORRES

DISTRICT JUDGE.

A-P-P-E-A-R-A-N-C-E

For the Plaintiff: Jamiu Said,Pro-se.

For the Defendant:Anna V. Crawford,Esq.&

Anthony C. Digiola Esq.

Appellant Appendix-#14,Page 359,Line:4-14.

Addressing

The Court: Well what evidence do you have that you were replace, Mr.Said?

Mr. Said: I have exhibit here that I was replace.

The Court:You have what.?

APPENDIX-M2

Mr. Said: I have the exhibit, Exhibit-#40.

(Number-Fourty)

The Court: Number Fourty.?

Mr. Said: YES.

The Court: I don't have a Number Fourty on your list of exhibit, Mr. Said.

/S/Judith L. Montie

Judith L. Montie

Court Reporter

215 Fed.Bldg.Prov. RI 02903

APPENDIX-N1

UNITED STATE POSTAL SERVICE

Personel Action Notification.

Extract: From(PS-Form-50 & 2591) and Clock rings.,Authorization and Adjustment Record Finance-#43-7141.Providence Proc/Dist.Ctr. (Main Unit).

The Following Tour-1(one)-3rd-shift Employee of the respondent were not of nor do they belongs to petitioner protected group.

Employee: #438-21-7983.D.Court Exh.J-30A, 30B,(i.e.Appel.Appendix-#9,PP. 160,161.)

Hiring Date: 1/1/93

Promotion Date:3/21/93.,less 89 days on the job requirement.

Employee: #037-50-4238.D.Court Exh.J-41A, (i.e.Appel.Appendix-9,P.227)

Hiring Date: 12/1/92

Promotion Date:3/12/93.

APPENDIX-N2

Career Appointment: 7/7/94.

Employee: #037-50-7401.D.Court Exh.J-43A, 43,43D,(i.e.Appel.Appendix-9,PP 239,242.

Hiring Date: 4/14/93.(as TE)

Career Appointment: 7/7/94.

Employee: #039-50-4805,D.Court Exh.J-44A, (i.e.Appel.Appendix-9, P.243

Hiring Date:2/24/93(as TE) Less 89-days on the job Requirement.

Career Appointment: 6/25/94

Employee: #035-50-5193.D.Court Exh.J-49A, (i.e.Appel.Appendix-9, P.264.

Hiring Date: 12/1/92.

Promoted: On April 7,1993(to TE)

Employee: #039-44-4640. D.Court Exh.J-35A, 35B(i.e. Appel.Appendix-9,PP.194 195..Hiring Date: 2/6/93.

Promoted: On 3/31/93..55-days on the job, less 89-days require-

APPENDIX-N3

ment before promotion.

Employee: #291-50-5443.D.Court Exh.J-27A, 27C,(i.e.Appel.Appendix-9, PP. 144,146.)

Hiring Date: 12/16/92

Promoted: On 3/12/93. Less-89 days requirement on the job before promotion. (to T.E.)

Employee: #037-40-5594. D.Court Exh.J-29A, PPP.152,153,155.

Hiring Date: 1/18/93

Promoted On: 2/24/93.(to TE 36-days on the job. less 89-days requirement before promotion.)

Career Appointment: 7/19/94.

Employee: #037-40-2154. D.Court Exh.J-36A, 36C(i.e.Appel.Appendix-9,PP.202, 204.

Hiring Date: 2/6/93.

Promoted: On 3/12/93.(to T.E.)

APPENDIX-N4

only 36-days on the job, less 89 days on the job requirement.

Career Appointment: On 10/15/94.

Employee: #038-52-7500, D.Court Exh.J-37A (i.e. Appl.Appendix-9. PPP.209, 210,212.

Hiring Date: 12/16/92

Promoted: On 3/21/93.

Employee: #039-42-4182.D.Court Exh.J-48A, 48B.(i.e. Appel. Appendix-9, PP. 259,260.)

Hiring Date: 12/22/92(as T.E.)

Per Authorization

J. Buford White.

Mgr.NE.Area Proc.& Distr.

Per Authorization

Nancy George.

Vice Pres. Area Oper.NE Area.

APPENDIX-01

IN THE UNITED STATE DISTRICT COURT

FOR THE DISTRICT OF RHODE-ISLAND

JAMIU SAID(Plaintiff)

VS. CA-#95-619T

MARVIN RUNYON(Defendant)

Monday, Feb. 24th, 1997.

PROVIDENCE, RI.

HEARD BEFORE THE HONORABLE ERNEST C.TORRES

DISTRICT JUDGE,

A-P-P-E-A-R-A-N-C-E.

For the Plaintiff: Jamiu Said.Pro se.

For the Defendant: Anna V. Crawford. Esq.

Anthony C. Digiola Esq.

(Court Trial Transcript,P.95,Line-9 to 95)

Addressing

Miss Crawford: (Defendant D.Court Exh.-E was presented).Do you recognized this letter.?

Mr. Said: My termination Letter.

Miss Crawford: Did you received a copy of

APPENDIX-01

that.?

Mr. Said: Yeah, I received a copy of that (termination letter) 4.00pm of April 12, 1993.

Miss Crawford: What was uour understanding of the reason why you were discharged by the postal Service.

Mr. Said: That shows Insubordination.

Miss Crawford: Insubordination.?

Mr. Said: That's what it is..

/S/Judith L. Montie.

Judith L. Montie.

Court Reporter

215 Fed.Bldg.Prov,.RI 02903.

APPENDIX-P1

UNITED STATE DISTRICT COURT

FOR THE DISTRICT OF RHODE-ISLAND

Jamiu A. Said(Petitioner)

V. CA.#95-0619T

Marvin T. Runyon Jr.(Defendant)

Postmaster-general of United State.

MAGISTRATE JUDGE OPINION AND RECOMENDATION PURSUANT TO 28 USC SECT.636(B)1(B) (WITHOUT PLAINTIFF RECEIVING TIMELY DISCOVERY DISCLOSURE REQUEST.)

In Sum defendant is entitled to summary Judgment as a matter of law, becaused plaintiff has failed to produce sufficient facts to support any claims of discrimination under Title-VII for his termination from the postal services.

CONCLUSION:

For the reason stated herein, I recomend that defendant motion for summary Judgment be granted. Any objection to this

APPENDIX-P2

report must be specific and must be filed with the clerk of the court within Ten (10) days of it's receipt.(Fed.Rule of Civ. Proc.72(B). Failure to file specific objection in a timely manner constitute waiver of the right to review by the district court. citing: United State V. Valencia-copete.792 F.2d.4.(1st-Circ.1986)

/S/Timothy M. Boudewyns.

Timothy M. Boudewyns.

United State Magistrate Judge.

October 18th, 1996.

APPENDIX-Q1.

LAW DEPARTMENT

UNITED STATE POSTAL SERVICE.

Certified Mail.

Jamiu A. Said October 10, 1996

P.O. Box 3229

Providence, RI 02909.

Re: Said V. Runyon

Civil Action No.95-619T

Dear Mr. Said:

I have been trying to reach you to advise you that I will send by certified mail the clock ring information we were ordered by the court to provide to you. Enclosed are those document. The personel records you requested will be made available for inspection and copying at the offices of the postal services at 24 Corliss Street, Providence.

Please call Rene Salois to make an appointment to review them.(401)276-6876.

APPENDIX-Q2

Also I have not had the courtesy of a response from you as to our monetary settlement offer made last month. The amount offered to you represents the amount of pay you would have received had you completed your casual assignment. Please respond to my letter of September 23rd, 1996.

Very truly Yours,

/S/Anna V. Crawford

Anna V. Crawford

Special Asst.U.S.Attorney

USPS Law-Dept.

cc: Anthony Digiola,AUSA(letter only)

Rene Salois(letter only)

#6 Griffin road, North-Windsor

Ct. 06006-0170.

APPENDIX-Q3

POST OFFICE TO ADDRESSE

Adressee Copy(petitioner Copy)

Revealing that the **Content** of the Appendix-Q1, & Q2. was not received by the Petitioner until **October 23rd, 1996.**

Per tracking Records **No.EG545199815US.**of the respondent certify mail to petitioner.

APPENDIX-R1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE-ISLAND

JAMIU SAID(Plaintiff)

VS. CA.-#95-619T

MARVIN RUNYON(Defendant)

MONDAY,FEB.,24TH,1997.

PROVIDENCE, RI.

HEARD BEFORE THE HONORABLE ERNEST C.TORRES

DISTRICT JUDGE.

A-P-P-E-A-R-A-N-C-E.

For the Plaintiff: Jamiu Said Pro-se.

For the Defendant: Anna V. Crawford Esq.&

Anthony C. Digiola Esq.

(Court Trial Transcript.P.33,Line-12 to 95 & P.-31,Line-1 to 5).

Addressing

The Court: You don't need a document to proved that you are from lagos.

Mr. Said: How am I going to do it.?

The Court: No if you simply ask yourself

APPENDIX-R2

where were you born and you can answer that question and that will be sufficient evidence, unless Miss Crawford has some evidence to disproved that you are not from Lagos-Nigeria.

Mr. Said: Okay.

Mr. Said: (Question) Mr Said are you from Lagos,-Nigeria.?

Mr. Said: Yes, I am.

Mr. Said: (Question) Mr. Said are you of Black Race.?

Mr. Said: (Answer) Yes, I am.

Mr. Said: (Question) Mr. Said is your religion Islamic, Muslim.?

Mr. Said: (Answer) Yes, I am.

Per Court Reporter,

/S/Judith L. Montie.

Judith L. Montie.

215 Fed.Bldg.Providence,RI 02903.

APPENDIX-R3

UNITED STATE POSTAL SERVICE

Personel Action Notification

Extracts: From(PS-Form-50 & 2591)

Re: Respondent Personel Records of/on the Petitioner.

Employee Name: Jamiu A. Said(Petitioner)

Employee #: 457-47-2966

Minority:Black, Non-Hispanic.

Place of Birth: Lagos.(Nigeria)

Citizenship: United State of America.

Position: Mail-Processor(Tour-1,12am-6am)

Qualification: Special degree holder see:
(Mary P. Valentino V. USPS.
674 F.2d.56.D.C.C.1981/82)

Hiring Date: December 1st, 1992.

Duty Station: #43-7141,Prov.Proc/Dist.Ctr.
(Main-Unit)

Per Authorization.

J. Buford White.

Mgr.NE Area Proc.& Dist.

APPENDIX-S1

UNITED STATE DISTRICT COURT

DISTRICT OF RHODE-ISLAND

JAMIE A. SAID(Plaintiff)

V. C.A.95-619T

MARVIN T. RUNYON JR.(Defendant)

Postmaster General(USPS)

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In Pursuant to Rule-56 of the FRCP respondent motion the court for summary Judgment.-On Page VI,Line-16 to 17 of the motion, Respondent asserting that:"quote" **There was only one Transitional Employee Position available to tour-one shift.**

On Page-10, Line-21 to 22 of the motion, Respondent asserting that:"quote" **Becaused Transitional employee (T.E.) were selected based upon Attendance and and Work Performance and not on Seniority and Education.**

Again on Page-10, Line-5 of the

APPENDIX-S-2

motion, Respondent asserting that:"quote"

<u>More-over the Fact that the Ranking Procedure was largely Subjective</u> by itself.

Respectfully Submitted,

/S/Anna V. Crawford.

Anna V. Crawford.

USPS-Law Dept.#8 Griffing Rd. Nw. Ct.06006

Dated Windsor, Ct.

August 2nd, 1996.

APPENDIX-T1

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE-ISLAND

CA.-95-619T

JAMIU A. SAID(Plaintiff)

P.O.BOX 3229

Providence, RI 02909

V.

MARVIN T. RUNYON(Defendant)

United State Postal Services

(N.E./New-York Metro area.)

Agency.

Plaintiff, Complaining of the defendant avaers:

JURISDICTION AND VENUE

(1) Plaintiff invokes the jurisdiction of this court pursuant to 28 USC sect.1337 and 1343(4) and 42 USC sect.2000e-5(f). Plaintiff also invokes this court pendent jurisdiction. This is an action authorized and instituted pursuant to Title-VII of

APPENDIX-T2

the Civil Right Act of 1964 as ammended. 42 USC sect.2000e.et.seq.(Title-VII)and the common law.

(2) The unlawful employment practices alledge in this complaint were committed in the Providence County in the State of Rhode-Island.

PARTIES

(3) Plaintiff Jamiu A. Said is a male citizen of the United State of America and a resident of Providence County in the State of Rhode-Island

(4) Plaintiff avers on information and belief that defendant United State Postal Services is a Federal Agency,Corporation Organized and existing under the laws of the United State of America, is qualify to do business in the State of Rhode-Island and does business in Providence County under the name of United Postal Services.

APPENDIX-T3

(5) The defendant is an"employer" within the meaning of sect.701(b) of Title-VII in that it engages in an Industry affecting commerce and has employed more than the requisite number of persons for the requisite duration under Title-VII.

ADMINISTRATIVE PROCEDURES

(6) Plaintiff timely filed a formal complaint/charges of discrimination against defendant with Equal Employment Opportunity Commission(EEOC) on or about June 13th, 1993.

(7) On July 18th, 1994 Plaintiff new counsel filed an appeal to Commision(EEOC) office of federal operation along with memorandum in support of the appeal.

(8) On or about November 10th,1995 Plaintiff received from EEOC a final decision and a notice that entitling Plaintiff to commence this action within

APPENDIX-T4

30-days of his receipt of that notice.

(9) Plaintiff has stisfy all private administrative and Judicial perequisites to the institution of this action, neither the State of Rhode-Island nor the city of Providence has a law prohibiting the unlawful employment practices alledge in this complaint under which plaintiff was obliged to make a complaint or charge.

BACKGROUND

(10) Plaintiff was employed by defendant as a casual Mail Processor on 6-hrs/shift and 6-days/week schedule with opportunity to grow and full-time until April 12th, 1993 when he was constructively discharged of his duties. On April 12th, 1993 acting supervisor(SDO) already assigned duty to the plaintiff for the tour period which normally ends at 7.30am and for plaintiff ended tour mostly

APPENDIX-T5

at 7.30am and for all casuals at the time is to end your tour at 7.30am go on break and punch out at 8.00am, if you don't want the break then punch out at 7.30am and go home or leave the facility. Time-slip/card will confirm this.

(11) On or about 7.30am Plaintiff working alone when supervisor(SDO) in question from tour-two (2) stood away from plaintiff at about 35-40 feet distance called on plaintiff verbally/loudly with a hand gesture asking plaintiff as to what time he is off duty, both Plaintiff and SDO looking at their wrist-watch(7.30am) He replied this SDO as to off duty to be 7.30am and from this same distance this SDO-Verberlly and <u>with hand gesture "informed plaintiff to go home"</u>. Plaintiff left the work station took his jacket for the time clock and punch out of the faci-

APPENDIX-T6

lity at 7.35am. Meanwhile while he was on his way out he answered some question on behalf of the new casual as he was called by one of the casual to intervened as to the time tour-one usually ended, which Plaintiff answered as 7.30am to give room for tour-two (2) employee and as casual you can leave the facility at 7.30am if you don't want the break or hang around till 8.00am then go home or punch out (This also applied to some of the permanent full-time employee "check" the time cards)

(12) On same day on or about 4.00pm Plaintiff received termination letter in the mail on this false accusation from (MDO) "Manager district Operation" without any inquiry as to the plaintiff work ethics. For good 27-days Plaintiff try as much to contact MDO and any of the SDO

APPENDIX-T7

through the phone, certify letter, and in-person to tell his concern but to no avail. Ascerting the action of the management is pre-meditated against the plaintiff due to his race, religion practice, and national origin.

(13) During the period between February, March and April of 1993, 15-20 casuals employee, some are less than 30-days or 60-days on the Job were continuously promoted/appointed to Transitional employee position. Several employee were brought in from different department, different shift even called in from laid off or termination place in Plaintiff department/shift and were continuosly promoted into Transitional Employee. Whereas Plaintiff a family man with a bachelor's degree, skilled and experience on the job, has already served two-89-days

appointment after the initial 30-days has applied for the same Transitional Position. (14) At one time Plaintiff met and discussed with his immediate supervisor as to his qualification and appointment into this status(Transitional Employee).This SDO replied to plaintiff that plaintiff is a "Good Worker", that office request names of casual to be promoted periodically and that in order for plaintiff to be promoted or appointed to Transitional Employee, he has to be"VOTED-IN" by all Floor Supervisor's when he only worked under the supervision of" 3 to 4" supervisors. Plaintiff affirmed that all casual promoted during this time were not judge this way(Discriminating).But he has to be Judge this way becaused of who he was being a Muslim by religion practice, a Nigerian by national origin and a Black man by race.

APPENDIX-T9

(14) At another time in period Plaintiff met and discussed with another SDO as to his appointment to Transitional employee, this SDO replied to plaintiff that he see no problem to his job performance that he would see to it.- same SDO supervising casual on 4/12/93. During the first week of plaintiff on the job, plaintiff assert to have informed the supervisor training that twice he passed the Postal Exam with aboved average scored and twice defendant sent him a letter asking if plaintiff is interested in job offer, if so to identify himself and sign the letter which he did twice never to hear from defendant again. Plaintiff could'nt get any explanation from this supervisor as to why there is no reply from defendant. Plaintiff concluded that once he has already passed the postal

exam twice if he make the transitional status with his good job performance he automatically becomes permanent full-time employee of the defendant with all rights of employment.

(15) On or about 3-days prior to 4/12/93, plaintiff met and had a discussion with MDO who is responsible for appointing transitional employee concerning his appointment as other casual has done. This MDO wrote down plaintiff's name and refered him back to his immediate supervisor, but before plaintiff could talk to his immediate supervisor on the issued, plaintiff received the termination letter in the mail.

(16) Plaintiff asserted that the accusation of failure to followed supervisor instruction was "Pre-text" for discrimination. The accusation in itself

APPENDIX-T11

to the plaintiff is"**UNTRUE**"and in as much unrelated to plaintiff job performance, remain in the area doing what ?(see affidavit B exhibit-6 of investigative file) on the day in question plaintiff was sorting binding mail to different zip-code prior and till 7.30am. He is not cutting open mail or continued to cut open mail as the SDO in question alledge in the commission report.(see floor surveilance camera). The Supervisor on duty over tour-one on the day of this alledge incident could'nt recalled if SDO tour-two asked him on 4/12/93 to verify the tour-one ending time for casual employee(see affidavit-D,exh.2, & 6 of investigative EEOC file).

(17) Defendant discriminated against the plaintiff due to his Religion practice, his Race and his National Origin. In violation of sect.703(a)(1) of the Civil-

APPENDIX-T12

Right Act of 1964.42 USC Sect.2000e-2(a)1 [42 USC Sect.2000e-2(a)(1)] by Constructively discharging him off his duty otherwise discriminating against the plaintiff. Plaintiff believed and thus avers that the effect of the defendant employment practices has been to limit, classify, and discriminate against him in ways which jeopardized and tend to deprived plaintiff of employment opportunity and otherwise adversely affect his status as employee becaused of his religion practice, his race and national origin. In violation of Title VII.

(18) Plaintiff Jamiu A. Said a victim of such practice will continued to be unlawful deprived of income in the form of Wages and Prospective retirement benefit, seniority, social security benefit, Insur-

ance coverage, monetary and non-monetary benefit due to him solely because of who he was.

(19) Plaintiff has no plain adequate or complete remedy at the law to correct the defendant unlawful employment practices and the injunctive and other equitable relief he seeks is his only means of securing Full-relief from this practices. Plaintiff is now suffering and will continued to suffer irreparable injury from this unlawful employment practices.

(20) Plaintiff asserts that he has being discriminated against, have being denied certain working rights and was passed over for full-time transitional and permanent position solely becaused of his religion practice, national origin and race. He is Charging the defendant with employment discrimination based on the

APPENDIX-T14

United State Civil Right Act of 1964, The FIFTH (5th), and FOURTEEN (14th) Amm-endment to the United State Constitution and the State of Rhode-Island Equal Right Act.

(21) Plaintiff demand jury trial in this case, in addition to the relief afforded by Title-VII, he is seeking Injunctive relief, Compensatory and Punitive damaged. Damages for emotional and mental distress, Pain and Suffering, humiliation and continious up to date harrassment.

WHEREFORE:

Plaintiff prays this court:

(i) declared that employment practices complained of in this complaint are unlawful in that they violate Title-VII.

(ii) Permanently enjoined the defendant and it's agents, officers and employee from engaging in all practices found by

APPENDIX-T15

this court to be in violation of Title-VII (iii) Order the defendant to make the plaintiff whole, all in amount to be proved at the trial (IV) Retain jurisdiction over this action to ensure full compliances with the court's order and require defendant to file such reports as the court deem necessary to evaluate such compliances.(V) Order the defendant to pay plaintiff's cost, expenses and reasonably attorney's fee as provided in Title-VII in Connection with this action. (VI) Grant such order and further relief to the plaintiff as the court deem just and proper.

This 29th day of November 1995.

By his.

/S/Jamiu A. Said.

Jamiu A. Said.

(Plaintiff)

APPENDIX-T16

address: P.O.BOX 3229
Providence, RI
02909.

Plaintiff demand a trial by jury of all issues triable of right by a jury.

This 29th day of November 1995.

/S/Jamiu A. Said.
Jamiu A. Said
(Plaintiff).